

Introduction

*** 1. Name (first and last name)**

*** 2. Email**

*** 3. Is this an individual submission, or is it on behalf of a group or organisation?**

- Individual
 On behalf of a group or organisation

*** 4. Which group do you most identify with, or are representing?**

- | | |
|---|---|
| <input type="checkbox"/> Iwi or hapū | <input type="checkbox"/> Fuel importer or wholesaler |
| <input type="checkbox"/> General public | <input checked="" type="checkbox"/> Fuel retailer |
| <input type="checkbox"/> Environmental | <input type="checkbox"/> Large fuel user |
| <input type="checkbox"/> Local government | <input type="checkbox"/> Other fuel sector stakeholder |
| <input type="checkbox"/> Research institute / academia | <input type="checkbox"/> Oil and gas sector |
| <input type="checkbox"/> Industry or industry advocates | <input type="checkbox"/> Consultant, financial services etc |
| <input type="checkbox"/> Central government agency | |
| <input type="checkbox"/> Other (please specify) | |

***5. Business name or organisation (if applicable)**

Foodstuffs (NZ) Ltd

***6. Position title (if applicable)**

*** 7. Important information about your submission (important to read)**

The information provided in submissions will be used to inform the Ministry of Business, Innovation and Employment's (MBIE's) work on *Regulations under a Fuel Industry Bill and other matters*.

We will upload the submissions we receive and publish them on our website. If your submission contains any sensitive information that you do not want published, please indicate this in your submission.

The Privacy Act 1993 applies to submissions. Any personal information you supply to MBIE in the course of making a submission will only be known by the team working on the *Accelerating renewable energy and energy efficiency*.

Submissions may be requested under the Official Information Act 1982. Submissions provided in confidence can usually be withheld. MBIE will consult with submitters when responding to requests under the Official Information Act 1982.

We intend to upload submissions to our website at www.mbie.govt.nz. Can we include your submission on the website?

- Yes
 No

*** 8. Can we include your name?**

- Yes
 No

*** 9. Can we include your organisation (if submitting on behalf of an organisation)?**

- Yes
 No

10. All other personal information will not be proactively released, although it may need to be released if required under the Official Information Act.

Please indicate if there is any other information you would like withheld.

Regulations under a Fuel Industry Bill and other matters - Have your say

Areas you wish to provide feedback on

The *Regulations under a Fuel Industry Bill and other matters* discussion document seeks feedback on proposed content of regulations under a Fuel Industry Bill and on options for a regulatory backstop to be included in a Fuel Industry Bill at a later date. The document is divided into four sections:

- **Introduction**
- **Wholesale fuel markets**
- **Consumer information**
- **Information disclosure and monitoring**

You are invited to provide feedback and respond to questions in as many, or as few of the sections as you would like, depending on your interests.

Section 2 on wholesale fuel markets seeks feedback on a number of proposed aspects of wholesale market regulation. The section seeks feedback on the content of regulations in the following areas:

- Terminal gate pricing
- Regulating terms in wholesale contracts
- Dispute resolution processes for wholesale markets

Submissions on these proposed regulations together with feedback on consumer information and information disclosure and monitoring are sought by **5pm, Friday 25 April**.

Section 2 also includes a section for feedback on a regulatory backstop regime to be included in legislation at a later date. Submissions on the issues specifically relating to a regulatory backstop are sought by **5pm, Friday 15 May**.

Wholesale markets

Terminal Gate Pricing

1

Should fuel products other than regular 91 grade petrol, premium 95 grade petrol and regular diesel be subject to the TGP regime, for example, aviation and marine fuels, or premium 98 grade petrol? Please give reasons.

2

If the regime should apply to other fuel products, what are the standards used by industry for defining these fuel products?

3

Should there be a notice period for changes in the TGP price during a day?

4

Do you have any comments on how terminal gate prices should be set and publicly posted?

5

Is the prescribed minimum of 30,000 litres per week to one retailer or wholesaler appropriate?

6

Should the prescribed minimum be able to be changed, or varied? For example, could the prescribed minimum be different for different storage facilities, given some terminals supply larger fuel volumes than others?

7

Should there be any additional grounds for refusal, such as the quantity demanded being below a de minimis amount, or reasons of force majeure? If you consider there should be, please suggest a de minimis amount or identify which force majeure reasons should apply

.

8

We seek your feedback on whether occupational, health and safety requirements and creditworthiness could be determined on the day TGP supply is sought with minimal impact on the customer or the wholesale supplier?

If not, is it necessary to specify a pre-certification process with potential terminal gate customers in advance to allow an efficient assessment of whether these grounds for refusal have been met.

9

What other standard terms and conditions should be prescribed for sales by a wholesale supplier for the TGP at the storage facility?

10

Please provide comments on any other matters related to the terminal gate pricing regime.

Regulating terms in wholesale contracts

11

Should either or both of the TGP or an industry-recognised price reporting agency's price based (MOPS or equivalent) pricing methodologies be deemed to be transparent pricing methodologies?

12

Should any other pricing methodology be deemed a transparent pricing methodology?

13

Should there be any other reasonable exceptions?

14

What cost elements of a deemed pricing methodology should be itemised?

15

What would be an appropriate prescribed period after which distributors can terminate their wholesale fuel supply contracts?

16

What proportion of a distributor's annual requirements should be permitted to be subject to exclusive supply provisions?

17

Should the maximum exclusivity requirement apply as an average across the whole length of the contract? If not, how should it be applied?

18

Should the exclusivity requirement apply to the total fuel requirement of distributors, or to each fuel type?

19

Do these terms hinder the ability of dealers or distributors to compete?

20

Are there any other terms that are likely to hinder the ability of dealers or distributors to compete?

21

Should a term in wholesale contracts which prioritises supply to a supplier's own retail sites over that of a term customer be considered as likely to limit the ability of the dealers or distributors to compete?

Dispute resolution processes for wholesale markets

22

Do your wholesale supply contracts currently provide for a means of dispute resolution? If so, what does this look like?

23

Do you consider the existing arrangements for dispute resolution to be sufficient? If not, how much use do you think would be made of a new dispute resolution scheme?

24

Should participating in mediation be mandatory for the other party if one party wishes to attempt to resolve the dispute using this dispute resolution process?

25

Should the dispute resolution scheme apply if a wholesale supplier refuses to supply fuel at TGP?

26

Should the dispute resolution scheme apply to disputes that result from the new wholesale contract terms?

27

Should the dispute resolution scheme apply to disputes that result from any provision that relates to the terminal gate pricing regime?

28

Are there any other aspects of the new regime you think the dispute resolution scheme should apply to?

29

In your view, how can we ensure the dispute resolution scheme is affordable, easily accessible, and timely for all parties involved?

30

Should each party to a dispute be required to pay half the cost of the mediation or arbitration process?

31

In your view how can we ensure the dispute resolution scheme is effective?

32

Who should provide the dispute resolution services set up under the new regulations?

33

Should the dispute resolution scheme appoint an independent nominating authority to appoint dispute resolvers under the scheme?

34

Is there a specific skillset / background the mediator / arbitrator should have?

35

Please feel free to provide comments on any other matters related to the dispute resolution process.

Regulatory backstop

36

What should be the threshold and process for whether backstop regulation should be imposed on the TGP supply of specified fuel products at a terminal or terminals? Please give reasons.

37

How should the backstop price control regime be designed to apply to specified fuel products at a terminal or terminals? Please give reasons.

Consumer information

38

Do you have any comments on the costs of or time required to modify or install price boards?
 If changes are to be mandated, an appropriate transition period will need to be established. The amount of time required to implement the changes will ultimately depend on the extent of the changes that need to be made, practical considerations and compliance costs. There may need to be further consultation with industry once proposals are finalised.

39

Which grades of fuel should the requirement to display apply to? Should it apply to all grades of fuel including premium, or to premium fuels only?
 We recommend that pricing should be displayed for the most common types of fuel purchased. These are 91, 95, and diesel. These would cover the bulk of fuel purchased in the retail channel. Restricting price boards to the main grades of fuel would provide an appropriate balance between the policy objectives (allowing consumers to make price comparisons before entering a fuel site) and compliance costs for fuel retailers.

40

Do you consider that an obligation to display price should apply to all grades of premium fuel, or only to the main grades of premium fuel sold?
 95 only. This grade represents the bulk of the premium graded fuel sold.

Do you consider that there should be specifications in regulations on the layout, size or other requirements of a price board?

- For example, should there be a requirement for a particular ordering or colour coding of prices that are displayed on a price board?
- Are there any other requirements you consider should be applied consistently across price boards?

41 Retailers have strong incentives to ensure that price signage is clearly visible to attract custom and does not mislead customers as to which price applies to which grade of fuel. Price display boards are generally sited and sized to ensure good visibility at a distance.

Any specific regulation around placement, size, colour, order of grades listed etc would significantly increase compliance costs as it is likely to require substantial replacement or upgrading of existing price-board assets. Given the existing prominence of displays, there does not appear to be any strong rationale for requiring such changes.

Should there be an exception from the requirement to display a price of a particular grade of fuel if the volume of that type of fuel being sold at a particular retail site is below a certain minimum volume? If so, why, and what would be a reasonable threshold for such an exception?

42 If mandatory price board display is limited to the main grades i.e. 91, 95, and diesel, the proposal would be redundant. However, if a wider range of grades/types of fuel need to be displayed then the suggestion would probably have merit. We note that the more prices that need to be displayed, the more cluttered the displays will be, inhibiting easy reading and comprehension.

Should there be an exception from the requirement to have a price board displaying fuel prices if the total volume of fuel sold at a particular retail site is below a certain minimum volume? If so, why, and what would be a reasonable threshold for such an exception?

43 No. All customers have a right to know the price of the main grades before pulling into a fuel site to refuel. However, the cost of complying with price board regulations needs to be considered as part of the current consultation. Limiting the mandatory price display to the main fuel grades and types will reduce compliance costs for all fuel retailers including those that deal with smaller volumes.

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| 44 | <p>Is an exception needed for the situation where sellers must comply with NZTA requirements for signage on state highways?</p> <p>Are there any other situations where an exception might be needed? For example:</p> <ul style="list-style-type: none"> • is an exception required in relation to local authority bylaws? <p>are you aware of any issues that would mean that requirements on the display of price boards would conflict with local council requirements for signs under bylaws or the Resource Management Act? If so, describe these issues?</p> <p>The interface with NZTA requirements must be considered and reconciled. There needs to be clarity about which rules take precedence.</p> |
| 45 | <p>Are there any other issues that you think should be considered in development of regulations relating to the display of prices on price boards?</p> <p>Whether full pricing information could be provided by alternate means e.g. by website and/or mobile app?</p> |
| 46 | <p>Do you have any comments that you wish to make on other matters relating to transparency of information for consumers?</p> |

Information disclosure and monitoring

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| 47 | <p>Do you have any specific feedback or comments on the information identified in the above table that industry participants would be required to collect and disclose?</p> <p>Is there is any other information not identified above that should be collected and disclosed to enable monitoring?</p> <p>Foodstuffs members sell fuel from their supermarket sites on a commission basis. Our fuel partner manages pricing. Because of this the regulations should be written in a way that the retail market information can be provided by either party.</p> <p>The discussion document does not disclose the regions that information would need to be provided for. Further consultation on this would be advisable to ensure regions are of an appropriate size and have sensible boundaries.</p> |
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| 48 | <p>For Fuel Industry participants, what costs would there be for your business to collect and disclose this information?</p> <p>IT developments will enable the process of providing the retail market information to be largely automated, and, on this basis, we do not expect the costs to be hugely significant for this part of the market.</p> |
| 49 | <p>For Fuel Industry participants, is the information outlined above currently collected by your business?</p> <ul style="list-style-type: none"> If so, is it collected in a form or manner that would be consistent with what's outlined above, or would changes to your information collection processes be required? If not, what costs would be incurred in collecting this information? <p>Not in this detail. As above, due to planned IT developments, the retail market information could be provided in the future within acceptable cost parameters.</p> |
| 50 | <p>Are there any other factors not discussed above that could have an impact on the compliance cost of collecting and disclosing information? What are these factors?</p> <p>Commercial sensitivity needs to be considered. Because of this, any public disclosure of the information needs to be in aggregate form.</p> |
| 51 | <p>Are there any importing costs not captured in Table One that are relevant to understanding the cost of supplying fuel from a terminal in New Zealand?</p> |
| 52 | <p>Have the proposed parties outlined as the owners and suppliers of information in Table One been correctly identified?</p> <ul style="list-style-type: none"> Could data returns for dealers who sell fuel under the brand of a wholesaler, and do not set their own price, be completed by suppliers? If not, do you have any comments on options for minimising compliance costs in this situation? <p>Yes. The regulations need to be sufficiently flexible for the parties to determine who is best placed to provide the information in the specific circumstance, based on their contractual arrangements.</p> |

| | |
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| 53 | <p>Do you have any comments on the proposed frequencies for collection and disclosure of information outlined in Table One?</p> <p>Regular reporting on the retail information will ensure that the agencies have up-to-date market information as the market can change quickly.</p> |
| 54 | <p>Do you consider that the proposals outlined above strike the right balance between certainty and adaptability? Would you prefer that requirements such as frequency of information collection are set by agencies or set out in regulations?</p> <p>Regulation gives greater certainty. There is also a requirement for consultation which is appropriate. While regulations take some effort to change, they can be changed much more easily and quickly than primary legislation. The requirement for the relevant Minister to sign off on regulations also ensures a degree of independent oversight which agency-lead decision-making would not have.</p> |
| 55 | <p>Do you have any comments on proposals for agencies to develop templates to ensure that information is disclosed in a consistent format?</p> <p>Yes, we agree this is a sensible and will streamline the data compilation process.</p> |
| 56 | <p>For information that is proposed to be used for periodic analysis:</p> <ul style="list-style-type: none">• Should such information still be required to be disclosed on a regular basis, or should that information be held by the companies until needed? |
| 57 | <p>Do you have any other comments that you wish to make on matters relating to information disclosure and monitoring?</p> <p>If retailers were to be required to provide financial statements, this should relate only to their fuel retailing operations, not their entire business. While some supermarkets retail fuel, where this occurs it is a very small part of their total businesses. Accordingly, non-fuel transactions should be excluded from the information disclosure requirements.</p> |

End